

CHAPTER 7 – CASE RECORDS INFORMATION

ARTICLE 17 — PREPARATION OF CALENDARS

Revised March 29, 2006

74040.1 Policy

Department records shall be made available to the Board of Prison Hearings BPH at such times and in such form as the BPH may prescribe.

74040.2 Purpose

This section sets forth procedures for scheduling, case preparation, and processing of cases for BPH hearings.

74040.3 Preparation

Preparation of a hearing calendar begins months in advance of the hearings. The processes shall be completed within the specified time frames.

74040.3.1 90-to-120 Days Before Month of Hearing

A tentative computer listing shall be furnished to facilities by the BPH of life prisoners who should be scheduled for a hearing during a two-month period.

- The BPH shall continue to provide new and updated printouts every two months.

Facility staff shall review the listings and advise the BPH of the names and departmental identification numbers (CDC numbers) of prisoners who are:

- Entitled to a hearing during the period, but not included on the list.
- In need of rescheduling from previous months.
- On the list, but facility records reflect the inmate should not be scheduled.
- Ordered by the BPH to have an extended term hearing.

74040.3.2 90 Days Prior to Hearing

Prepare a tentative BPH calendar of those persons scheduled for hearings.

The calendar shall include:

- Inmate's name.
- CDC number.
- Type of hearing.
- Psychiatric report designation (when appropriate).

The tentative calendar shall be widely distributed throughout the facility.

The C&PR's copy of the calendar shall contain the following information:

- County of commitment.
- Minimum eligible parole date (MEPD).

A request for preparation of the appropriate report to the BPH shall be sent to the caseworker of each inmate.

74040.3.3 30-to-60 Days Prior to Hearing

The Correctional Counselor shall interview the life term inmate prior to the hearing and shall:

- Prepare a BPH report.
- Advise the inmate of hearing rights.
- Advise the inmate of the right to request an attorney. The BPH shall appoint an attorney if the inmate is indigent.
- Advise the inmate of their right to waive a hearing or ask for a continuance.

For life term cases, records staff shall prepare a BPT Form 1002, Life Prisoner: Parole Consideration Hearing Notice and send an original and one copy for the inmate's signature.

The caseworker shall verify the trust fund balance to determine if the inmate is indigent or able to pay for an attorney. (See BPH Rule 2256.)

If the inmate declines representation, the inmate shall complete a BPT Form 1003, Life Prisoner: Waiver of Attorney or Withdrawal of Request.

If the inmate has a private attorney or had a private or State-appointed attorney at the previous hearing, the caseworker shall verify the attorney's availability for the hearing.

74040.3.4 45 Days Prior to the Hearing

The C&PR or designee shall prepare and transmit a FAX, or mail a copy of the calendar to the BPH scheduling unit containing the following information:

- Inmate's full name.
- CDC number.
- Attorney designation.
- Attorney's name and telephone number.
- Previous attorney (if applicable).
- County of commitment.

Hearings shall be scheduled according to the proximity of the counties from which the inmate has been sentenced.

- Schedule inmates from the same county in succession. This shall accommodate the DAs who plan to attend.

Restrictions

The following restrictions shall be considered:

- Microfiche cases shall not be scheduled on Mondays or Fridays.
- The Executive Officer or Chairman shall approve the scheduling of three subsequent hearings in one day.
- If three hearings are scheduled, ensure that none are microfiche cases.
- No more than one initial, rescission, or extended term hearing or any combination of the three shall be scheduled in one day.
- Normal starting times for hearings are as follows:
 - 9:00 p.m. and 2:00 p.m. (two hearings).
 - 830 a.m., 10:45 a.m., and 2:30 p.m. (three hearings).

The inmate shall be given copies of BPT Forms 1002, 1003, if applicable, and 1080, Notice of Date, Time, and Place of Hearing.

- Records staff shall make five photocopies of each form to be included in hearing packets.

Crime partner information shall be photocopied and placed in the miscellaneous section of each packet.

74040.3.5 35 Days Prior to Hearing

Pull the C-File and prepare PC 3042 and 3043 notices. Mail notices to the following persons prior to any parole consideration or rescission hearing on a life prisoner:

- The judge who presided at the trial and conviction of the inmate.
 - Complete BPT Form 1087-A, Notice of Hearing— Judge (If the judge is retired, deceased, etc., send the notice to the presiding judge of the committing county.)
- The DA's office which prosecuted the case.
 - Complete BPT Form 1087-B, Notice of Hearing— DA and mail to the DA of the county of commitment.
 - Fill in the exact date and time of the hearing in the space provided should the DA wish to attend.

- The law enforcement agency which investigated the offense.
 - Complete BPT Form 1087-C, Notice of Hearing. Include the location of the offense on the form.
- The attorney who defended the inmate at the time of trial.
 - Complete BPT Form 1087-C.
- The AG's Office.
 - Complete BPT Form 1087-C. Include the county case number and victim(s) name. Indicate any change of venue cases.
- The law enforcement agency which employed the murder victim if the victim was a peace officer.
 - Complete BPT Form 1087-C.
- Victim/next of kin/immediate family member, support person, or counsel who has requested notice and has provided a current address. (Does not apply to rescission hearing.)
- Complete BPT Form 1087-D, Victims Notice of Hearing.
- BPT Form 1006, Advance Information Sheet, shall be attached and sent with the BPT Form 1087-D.

BPH and C&PR Responsibilities

- The BPH shall notify the Office of Victim and Survivor Services (OVSS) of the authorization for the victim/next of kin/immediate family member, support person, or counsel to attend the hearing.
- The OVSS shall notify the respective C&PR of the authorization and provide the necessary information to process a clearance for the scheduled attendee.
- Upon notification, the C&PR shall initiate a gate clearance per institution/facility procedures.
- A scheduled attendee shall only be excluded from attending a hearing based upon the criteria established in Title 15, Section 3176.3.
- The Warden/Designee shall immediately notify the Director, Division of Adult Operations, whenever a determination is made to exclude a scheduled attendee.
- Should a scheduled attendee be denied access, the Victim Services Representative (VSR) shall make personal contact and provide an explanation as to the denial. The VSR shall also provide a written notice to the denied attendee detailing the reasons for denial and the process for appealing the denial.
- The C&PR shall be designated as the institution/facility's VSR, with the Assistant C&PR as the back-up to the VSR. The Warden may identify additional staff to act as a designee for the VSR.

Reports

Psychiatric reports from the medical department and board reports from the caseworker are due for completion.

- C&PR is to be advised of any board reports not completed.
 - Photocopy six copies, one of each to the inmate and one in each of the five hearing packets.
- Schedule a C-File review upon the request of the inmate's attorney.
 - Schedule the inmate to review their C-File prior to the attorney review if requested.

- If the inmate waived the right to an attorney, the caseworker shall arrange a C-File review upon request of the inmate.
- Remove confidential folder from the C-File and check contents.
 - Complete CDC Form 819, Personal Information Disclosure Log.
 - Place a copy of the form in the confidential section of the C-File.
 - Original to the C-File.
- Records staff shall review all hearing packets for completeness.
 - Forward one packet each to the DA and the inmate's attorney by certified mail.
 - When returned, file the certified receipt in the inmate's C-File.

74040.3.6 10 Days Prior to Hearing

Ten days prior to the hearing is the deadline for incorporating or sending material to the DA or the inmate's attorney for inclusion in the hearing packet.

- Any material received after this date shall be placed in an envelope to be given to both attorneys on the date of the hearing.

74040.3.7 5-to-7 Days Prior to the Hearing

Review hearing packets for completeness. Sign and date the BPT Form 1008, Life Prisoner Parole Consideration Hearing Checklist.

Update the master calendar with the names of attorneys who will attend the hearings.

74040.4 Documentation Hearing

The documentation hearing is conducted for the purpose of monitoring and recording the inmate's conduct, adjustment, and progress while incarcerated and occurs prior to the initial parole consideration hearing.

74040.4.1 Panel Composition

The documentation hearing shall be conducted by one deputy commissioner.

A facility staff representative, knowledgeable about the individual case and facility programs, shall be available to advise and assist the panel in its evaluation and documentation of the inmate's progress.

74040.4.2 BPH Hearing — Victim Escort Procedures

Victims/next of kin/immediate family members, support person, or counsel upon arrival at the correctional facility shall be processed and escorted to the hearing in accordance with the Department Operations Manual Chapter 6, Article 13, BPH.

74040.4.3 Inmate Hearing Rights

The inmate shall have the rights enumerated in BPH Rules 2246 through 2254.

74040.4.4 Documents Required

The material to be presented at these hearings shall consist of the:

- C-File.
- BPT Form 1009, Life Prisoner: Documentation Hearing, with the inmate's name, number, facility, sentence information, maximum term, and MEPD typed on the form.
- Parole documentation hearing board report.
- Psychiatric reports.

74040.4.5 Post Hearing Procedures

The CCRM shall schedule the inmate for a subsequent documentation hearing or parole consideration hearing as appropriate.

Documentation hearing results shall be posted to the CDC Form 112, Chronological Inmate History.

The BPT Form 1009 shall be completed by the panel at the time of the hearing and shall be effective at that time.

A copy shall be given to the inmate.

The BPT Form 1004, Life Prisoner: Post-conviction Progress Report, the BPT Form 1009, the psychiatric evaluation, and any other documents designated by the panel shall be incorporated as a part of the "Board Addenda" to ensure availability to the initial parole consideration hearing panel.

74040.5 Initial and Subsequent Parole Consideration Hearings

If the inmate is found unsuitable, parole shall be denied and a written statement of the specific factual reasons for the denial shall be given to the inmate.

At the subsequent hearings, the panel shall consider the information developed since the last hearing.

The hearing panel may recommend to the inmate certain steps that may be undertaken to enhance the possibility of a grant of parole at a future hearing.

If an inmate is found suitable for parole, a tentative parole date shall be set.

74040.5.1 Panel Composition

Life

The panel shall be composed of three BPH staff, two of whom shall be commissioners.

Nonlife

The panel shall be composed of three BPH staff, two of whom shall be deputy commissioners.

74040.5.2 Inmate Hearing Rights

Life

The inmate shall have the rights enumerated in BPH Rules 2245 through 2256.

Nonlife

The inmate shall have the rights enumerated in BPH Rules 2245 through 2252, 2254, and 2255.

74040.5.3 Required BPT Forms (Life Cases)

The following forms shall be available for use for life cases:

- BPT Form 1000, Life Prisoner Parole Consideration Worksheet.
- BPT Form 1000(a), Setting a Term-Life Prisoner Parole Denied.
- BPT Form 1000(b), Setting a Term-Life Prisoner Parole Granted.
- BPT Form 1001, Life Prisoner Decision Face Sheet.
- BPT Form 1001-A, Life Prisoner Hearing-Extraordinary Action and Decision.
- BPT Form 1002.
- BPT Form 1003.
- BPT Form 1004.
- BPT Form 1005, Life Prisoner: Parole Consideration Proposed Decision (BPH 2041).
- Life Prisoner: Parole Consideration Proposed Decision.
- BPT Form 1008.
- BPT Form 1080.
- BPT Form 1087-A, B, C, and D.

- BPT Form 1082, Continuation Sheet.

74040.5.4 Hearing Package Preparation

Three packages plus the original hearing material listed on the CDC Form 822 shall be prepared for use during the parole consideration hearing for non-life cases.

Four packages plus the original hearing material as listed on BPT Form 1008 shall be prepared for use during the parole consideration hearing for life cases.

Lifer and non-lifer packages shall contain letter-size dividers with side index tabs, divided into categories. Within each category, documents shall be filed together in reverse chronological order, beginning with the most recent dated document. The packages shall be divided into the following categories:

- Case Summary.
- BPH report(s) (all).
- Psychiatric report(s) (all).
- Prior BPH decisions (Adult Authority, Community Release Board [CRB], BPH).
- Notices and responses (current hearing) including official letters, fearful letters, and supporting letters.
- Legal documents:
 - POR.
 - Crime report(s).
 - Abstracts of judgment/Minute orders.
 - Charging documents.
 - Appellate court decisions.
 - Sentencing transcripts.
- Miscellaneous:
 - Crime partner decision forms if any.
 - Notice of hearing rights.
 - Disciplinary reports since last hearing.
 - Other pertinent information developed since the last hearing.
 - Photographic evidence.
- For subsequent hearings include the last hearing transcript, not indexed.

Prior to Hearing

Prior to the hearing, the case records staff shall prepare the following forms:

- BPT Form 1001.
- BPT Form 1005.
- BPT Form 1004.
- BPT Form 1082.
- BPT Form 1000.
- BPT Form 1000(a).
- BPT Form 1000(b).
- BPT Form 1081 if applicable.

74040.5.5 Distribution of Packages

The following distribution is mandatory:

- One for each commissioner.
- One for the inmate's attorney.
- One for the representative of the DA's office.

74040.6 Parole Board Rules Hearings (In re Stanworth)

The California Supreme Court held that life prisoners who committed their offenses prior to July 1, 1977 are entitled to have parole dates established under the guidelines in effect prior to July 1, 1977.

The court further held that denial of the establishment of parole dates of these prisoners under the earlier guidelines violated the constitutional prohibitions against ex post facto laws.

74040.6.1 Eligibility

A life-term inmate is entitled to a parole consideration hearing under Parole Board Rules (PBR) if:

- The offense was committed on or before June 30, 1977; and,
- The inmate presently has a parole date that was granted under BPH or CRB Rules, but has not received a parole date under PBR.

74040.6.2 Hearing Guidelines

The BPH shall use the parole consideration guidelines in the PBR 2200 through 2360 (CCR (15) (2) Reg 76, No. 21, 5/22/76).

74040.6.3 Panel Composition

The hearing shall be conducted by two deputy commissioners.

74040.6.4 Inmate Hearing Rights

The inmate shall have the rights specified in PBR C 2110 through 2119 [CCR (15) (2) Reg 76, No. 21, 5/22/76].

74040.6.5 Hearing Packets

Two hearing packets detailed in DOM 74040.3.7 shall be prepared for these hearings.

74040.7 Progress Hearings

A progress hearing shall be scheduled periodically after a life-term inmate has had a parole date established.

The panel shall determine whether a previously set parole date should be advanced because of the inmate's positive conduct in prison or whether there are changes in circumstances that might lead to an earlier parole date.

74040.7.1 Panel Composition for Progress Hearings

Progress hearings shall be conducted by a panel of three, two of whom shall be commissioners.

74040.7.2 Hearing Procedures

The inmate is not entitled to an attorney.

A representative from the DA's office of the committing county shall not attend.

No PC 3042 notices are required.

Progress hearings are scheduled as "trailers" to the regular lifer calendar or they may be formally scheduled.

74040.7.3 Procedures Prior to the Hearing

Reports required:

- BPH reports.
- Psychiatric report (when a previous panel has requested one for this hearing).

Completion of the report and disclosure to the inmate shall occur 30 days prior to the hearing.

Three hearing packets shall be prepared and include the documents listed on the CDC Form 823, Indeterminate Sentencing Law (ISL) Progress Hearing Checklist.

Complete the information required on the BPT Form 1007, Life Prisoner Progress Hearing Decision Face Sheet.

Complete the required information on the BPT Form 1004.

74040.8 Postponement or Rescission of Release

The parole date of an ISL inmate or of a life or non-life PC 1168 inmate may be postponed or rescinded for good cause at a rescission hearing.

The BPH shall determine whether to initiate rescission proceedings.

74040.8.1 Procedures for Reporting

Staff shall report serious disciplinary behavior to the BPH, headquarters calendar, pursuant to BPH Rule 2451.

Cases shall be reported prior to the inmate's scheduled parole date.

- If a case has not been referred to the DA for prosecution, the case shall be reported within 15 days.

If the case has been referred to the DA, the case shall not be reported to the BPH until:

- Within 15 days after refusal to prosecute.
- Within 15 days after the criminal prosecution has terminated.
- The inmate is within 60 days of their scheduled release date.

The BPH shall note the report, take no action, or order the matter placed on calendar.

The decision shall be documented by the BPH, headquarters calendar, and a copy sent to the facility.

74040.8.2 Postponement or Rescission of Release Date

If an inmate with a previously established parole date receives a new commitment to prison, the parole date shall be rescinded and no hearing by the BPH is required.

The inmate may appeal the rescission only on the grounds that they are not the person sentenced by the new judgment.

The CCRM shall process the new commitment, post the CDC Form 112 indicating the parole date has been rescinded.

The CDC Form 112 posting shall read: _____ (Date of posting) parole date of (date of parole) rescinded per BPH Rule _____ (indicate applicable BPH Rule number).

- BPH Rule 2273 in the case of life inmates.
- BPH Rule 2308 for ISL and nonlife PC 1168 inmates.

74040.9 Hearings for Inmates With Changes in Legal Status

The inmate shall be scheduled for a parole consideration hearing pursuant to BPH Rule 2308(c).

- If the new term is for a determinate term, the parole consideration hearing shall be conducted within 60 days of the receipt of the new commitment.
- The legal status change shall be considered at the initial parole hearing as regularly scheduled or as would be scheduled considering the change in the legal status.

After the initial ISL parole hearing if a legal status change occurs, the inmate shall be scheduled immediately for a progress or subsequent hearing as appropriate.

74040.9.1 Pre-hearing Procedures

An inmate shall have the right to request the presence of friendly and/or adverse witnesses at a rescission hearing, BPT Form 1015, Notice of Right to Rescission Hearing.

The witnesses shall be called unless the hearing panel has specified reasons to deny the request.

Witnesses shall be screened under the procedures of BPH Rule 2668.

An inmate may request, subpoena, or subpoena duces tecum witnesses as provided in BPH Rules 2675 through 2682. If denied, the specific reason(s) for the denial shall be documented and a copy given to the inmate.

During the hearing, the inmate has the right under the direction of the hearing panel to question all witnesses.

An inmate is entitled to an attorney and may request assistance (BPT Form 1015).

PC 3042 notices shall be sent according to procedures outlined in DOM 74040.3.5.

74040.9.2 Documents Required

Prepare five hearing packets containing the following:

- A cover sheet with the following information:
 - Inmate's name.
 - CDC number.
 - Reception date.
 - Offense.
 - MEPD.
 - BPH parole date granted and parole date.
 - PBR parole date granted, if applicable, and parole date.
 - Dates of progress hearings, if applicable, and new parole dates.
- Copies of CDC Form 115s and Department investigative reports only.

If the basis for the rescission hearing is psychiatric deterioration, include copies of recent psychiatric chronos or other necessary information.

Copies of BPT Form 1080 and CDC Form 833, Record Information Release Authorization, shall be included.

Prepare BPT Form 1016, Summary of Rescission Hearing and Decision with name and CDC number on the bottom of the form.

The C-File shall be available in the hearing room.

74040.9.3 Panel Composition

The rescission hearing for life prisoners shall be conducted by a panel of three, at least two of whom shall be commissioners.

For ISL inmates, the hearing shall be conducted by two deputy commissioners.

74040.10 Extended Term Hearings

The CCRM shall refer the case of any inmate for screening as ordered by the BPH.

The second screening shall be conducted by deputy commissioners who shall review the case including the retroactive calculation, CDC Form 678, Cumulative Case Summary Confinement Computation.

If the panel determines that the inmate shall receive PC 1170.2(a) recalculated Determinant Sentencing Law (DSL) release date, that shall be the decision and the inmate shall be notified in writing of the decision, CRB Form 1091, Third Screening Decision.

The cases referred for extended term hearings shall be reviewed by two commissioners within 90 days of reception by the Department.

Extended term hearings shall be conducted within 120 days of reception by the Department or 120 days from the date the Department received a new or amended abstract or any court order which modifies the original commitment.

A prisoner scheduled for an extended term hearing has the rights enumerated in BPH Rules 2245 through 2256.

The panel shall be composed of three BPH staff, two of whom shall be commissioners.

74040.10.1 Previously Retroactively Calculated

All legal status changes that might require a re-computation of a previously recalculated term shall be referred to a BPH panel for review.

Changes to retroactive PC 1170.2(a) or (b) terms include:

- Change in the base term used for the calculation.

- Change in the enhancements on the principal term used.
- Changes in consecutive (CS) offenses or their enhancements used in the calculation.
- Additional commitments, whether concurrent (CC) or CS.

Changes that do not affect retroactive term(s) include:

- Certification or changes in preprison credits.
- Changes in CC terms which are not part of the previously approved PC 1170.2(a) calculation.

Legal status changes which may affect the term shall be set forth in the "facts" section of BPT Form 1135, Miscellaneous Decisions.

The recommendation section shall contain the recommended action.

The BPT Form 1135 and related material shall be presented to a BPH panel for consideration action.

The determination of the hearing panel shall be computed by case records staff using CRB Form 1089, Serious Offender Face Sheet.

The miscellaneous section of the face sheet shall be used by case records staff to explain the method of computation.

Full distribution of the computation shall be completed.

The CRB Form 1094, Serious Offender Decision Face Sheet, and BPT Form 1135 shall be stapled together and filed in the addenda.

74040.11 Parole Hearing For Inmates Serving Life Terms

All inmates serving sentences of life without possibility of parole shall be scheduled for BPH review 30 years after reception by the Department and every fifth year thereafter (BPH 2817).

74040.12 Revisions

The Director, Division of Adult Institutions, or designee shall be responsible for ensuring that the contents of this article are kept current and accurate.

74040.13 References

CCR (15) (2) Reg 76, No. 21, 5/22/76.

PC §§ 1168, 1170.2(a), 1170.2(b), 3042, and 3043.

BPH Rule 2041, 2246 - 2256, 2273, 2308, 2451, 2668, 2675 through 2682, and 2817.

PBR §§ 2110 - 2119 and 2200 - 2360.